

Calendar No. 700

99TH CONGRESS
2D SESSION

H. R. 4952

IN THE SENATE OF THE UNITED STATES

JUNE 24 (legislative day, JUNE 23), 1986

Received; read twice and placed on the calendar

AN ACT

To amend title 18, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Electronic Communica-
5 tions Privacy Act of 1986”.

6 **TITLE I—INTERCEPTION OF COMMUNICA-**
7 **TIONS AND RELATED MATTERS**

8 **SEC. 101. FEDERAL PENALTIES FOR THE INTERCEPTION OF**
9 **COMMUNICATIONS.**

10 (a) **DEFINITIONS.**—(1) Section 2510(1) of title 18,
11 United States Code, is amended—

1 (A) by striking out “any communication” and in-
2 serting “any aural transfer” in lieu thereof;

3 (B) by inserting “(including the use of such con-
4 nection in a switching station)” after “reception”.

5 (C) by striking out “as a common carrier” and

6 (D) by inserting before the semicolon at the end
7 the following: “or communications affecting interstate
8 or foreign commerce, but such term does not include
9 the radio portion of a cordless telephone communica-
10 tion that is transmitted between the cordless telephone
11 handset and the base unit”.

12 (2) Section 2510(2) of title 18, United States Code, is
13 amended by inserting before the semicolon at the end the
14 following: “, but such term does not include any electronic
15 communication”.

16 (3) Section 2510(4) of title 18, United States Code, is
17 amended—

18 (A) by inserting “or other” after “aural”; and

19 (B) by inserting “, electronic,” after “wire”.

20 (4) Section 2510(8) of title 18, United States Code, is
21 amended by striking out “identity of the parties to such com-
22 munication or the existence,”.

23 (5) Section 2510 of title 18, United States Code, is
24 amended—

1 (A) by striking out “and” at the end of paragraph
2 (10);

3 (B) by striking out the period at the end of para-
4 graph (11) and inserting a semicolon in lieu thereof;
5 and

6 (C) by adding at the end the following:

7 “(12) ‘electronic communication’ means any trans-
8 fer of signs, signals, writing, images, sounds, data, or
9 intelligence of any nature transmitted in whole or in
10 part by a wire, radio, electromagnetic, photoelectronic
11 or photooptical system that affects interstate or foreign
12 commerce, but does not include—

13 “(A) the radio portion of a cordless telephone
14 communication that is transmitted between the
15 cordless telephone handset and the base unit;

16 “(B) any wire or oral communication;

17 “(C) any communication made through a
18 tone-only paging device; or

19 “(D) any communication from a tracking
20 device (as defined in section 3117 of this title);

21 “(13) ‘user’ means any person or entity who—

22 “(A) uses an electronic communication serv-
23 ice; and

24 “(B) is duly authorized by the provider of
25 such service to engage in such use;

1 “(14) ‘electronic communications system’ means
2 any wire, radio, electromagnetic, photooptical or pho-
3 toelectronic facilities for the transmission of electronic
4 communications, and any computer facilities or related
5 electronic equipment for the electronic storage of such
6 communications;

7 “(15) ‘electronic communication service’ means
8 any service which provides to users thereof the ability
9 to send or receive wire or electronic communications;

10 “(16) ‘readily accessible to the general public’
11 means, with respect to a radio communication, that
12 such communication is not—

13 “(A) scrambled or encrypted;

14 “(B) transmitted using modulation techniques
15 whose essential parameters have been withheld
16 from the public with the intention of preserving
17 the privacy of such communication;

18 “(C) carried on a subcarrier or other signal
19 subsidiary to a radio transmission;

20 “(D) transmitted over a communication
21 system provided by a common carrier, unless the
22 communication is a tone only paging system com-
23 munication; or

24 “(E) transmitted on frequencies allocated
25 under part 25, subpart D, E, or F of part 74, or

1 part 94 of the Rules of the Federal Communica-
2 tions Commission, unless, in the case of a commu-
3 nication transmitted on a frequency allocated
4 under part 74 that is not exclusively allocated to
5 broadcast auxiliary services, the communication is
6 a two-way voice communication by radio;

7 “(17) ‘electronic storage’ means—

8 “(A) any temporary, intermediate storage of
9 a wire or electronic communication incidental to
10 the electronic transmission thereof; and

11 “(B) any storage of such communication by
12 an electronic communication service for purposes
13 of backup protection of such communication; and

14 “(18) ‘aural transfer’ means a transfer containing
15 the human voice at any point between and including
16 the point of origin and the point of reception.”.

17 (b) EXCEPTIONS WITH RESPECT TO ELECTRONIC
18 COMMUNICATIONS.—

19 (1) Section 2511(2)(d) of title 18, United States Code, is
20 amended by striking out “or for the purpose of committing
21 any other injurious act”.

22 (2) Section 2511(2)(f) of title 18, United States Code, is
23 amended—

24 (A) by inserting “or chapter 121” after “this
25 chapter”; and

(B) by striking out “by” the second place it appears and inserting in lieu thereof “, or foreign intelligence activities conducted in accordance with otherwise applicable Federal law involving a foreign electronic communications system, utilizing”.

(3) Section 2511(2) of title 18, United States Code, is amended by adding at the end the following:

“(g) It shall not be unlawful under this chapter or chapter 121 of this title for any person—

“(i) to intercept or access an electronic communication made through an electronic communication system that is configured so that such electronic communication is readily accessible to the general public;

“(ii) to intercept any radio communication which is transmitted—

“(I) by any station for the use of the general public, or that relates to ships, aircraft, vehicles, or persons in distress;

“(II) by any governmental, law enforcement, civil defense, or public safety communications system, including police and fire, readily accessible to the general public;

“(III) by a station operating on a frequency assigned to the amateur, citizens band, or general mobile radio services; or

1 “(IV) by any marine or aeronautical commu-
2 nications system;

3 “(iii) to engage in any conduct which—

4 “(I) is prohibited by section 633 of the Com-
5 munications Act of 1934; or

6 “(II) is excepted from the application of sec-
7 tion 705(a) of the Communications Act of 1934
8 by section 705(b) of that Act;

9 “(iv) to intercept any wire or electronic communi-
10 cation the transmission of which is causing harmful in-
11 terference to any lawfully operating station, to the
12 extent necessary to identify the source of such interfer-
13 ence; or

14 “(v) for other users of the same frequency to
15 intercept any radio communication made through a
16 common carrier system that utilizes frequencies moni-
17 tored by individuals engaged in the provision or the use
18 of such system, if such communication is not scrambled
19 encrypted.

20 “(h) It shall not be unlawful under this chapter—

21 “(i) to use a pen register (as that term is defined
22 for the purposes of chapter 206 (relating to pen regis-
23 ters) of this title);

24 “(ii) for a provider of electronic communication
25 service to record the fact that a wire or electronic

1 communication was initiated or completed in order to
2 protect such provider, another provider furnishing serv-
3 ice toward the completion of the wire or electronic
4 communication, or a user of that service, from fraudu-
5 lent, unlawful or abusive use of such service; or

6 “(iii) to use a device that captures the incoming
7 electronic or other impulses which identify the numbers
8 of an instrument from which a wire communication
9 was transmitted.”.

10 (c) TECHNICAL AND CONFORMING AMENDMENTS.—(1)
11 Chapter 119 of title 18, United States Code, is amended—

12 (A) in each of sections 2510(5), 2510(8),
13 2510(9)(b), 2510(11), and 2511 through 2519 (except
14 sections 2516(1) and 2518(10)), by striking out “wire
15 or oral” each place it appears (including in any section
16 heading) and inserting “wire, oral, or electronic” in
17 lieu thereof; and

18 (B) in section 2511(2)(b), by inserting “or elec-
19 tronic” after “wire”.

20 (2) The heading of chapter 119 of title 18, United States
21 Code, is amended by inserting “**and electronic commu-**
22 **nications**” after “**wire**”.

23 (3) The item relating to chapter 119 in the table of
24 chapters at the beginning of part I of title 18 of the United

1 States Code is amended by inserting “and electronic commu-
2 nications” after “Wire”.

3 (4) Section 2510(5)(a) of title 18, United States Code, is
4 amended by striking out “communications common carrier”
5 and inserting “provider of wire or electronic communication
6 service” in lieu thereof.

7 (5) Section 2511(2)(a)(i) of title 18, United States Code,
8 is amended—

9 (A) by striking out “any communication common
10 carrier” and inserting “a provider of wire or electronic
11 communication service” in lieu thereof;

12 (B) by striking out “of the carrier of such commu-
13 nication” and inserting “of the provider of that serv-
14 ice” in lieu thereof; and

15 (C) by striking out “: *Provided*, That said commu-
16 nication common carriers” and inserting “, except that
17 a provider of wire communication service to the
18 public” in lieu thereof.

19 (6) Section 2511(2)(a)(ii) of title 18, United States Code,
20 is amended—

21 (A) by striking out “communication common carri-
22 ers” and inserting “providers of wire or electronic
23 communication service” in lieu thereof;

24 (B) by striking out “communication common carri-
25 er” each place it appears and inserting “provider of

1 wire or electronic communication service” in lieu
2 thereof; and

3 (C) by striking out “if the common carrier” and
4 inserting “if such provider” in lieu thereof.

5 (7) Section 2512(2)(a) of title 18, United States Code, is
6 amended—

7 (A) by striking out “a communications common
8 carrier” the first place it appears and inserting “a pro-
9 vider of wire or electronic communication service” in
10 lieu thereof; and

11 (B) by striking out “a communications common
12 carrier” the second place it appears and inserting
13 “such a provider” in lieu thereof; and

14 (C) by striking out “communications common car-
15 rier’s business” and inserting “business of providing
16 that wire or electronic communication service” in lieu
17 thereof.

18 (8) Section 2518(4) of title 18, United States Code, is
19 amended by striking out “communication common carrier”
20 and inserting “provider of electronic communication service”
21 in lieu thereof.

22 (d) **PENALTIES MODIFICATION.**—(1) Section 2511(1) of
23 title 18, United States Code, is amended by striking out
24 “shall be” and all that follows through “or both” and insert-

1 ing in lieu thereof “shall be punished as provided in subsec-
2 tion (4)”.

3 (2) Section 2511 of title 18, United States Code, is
4 amended by adding after the material added by section 102
5 the following:

6 “(4)(a) Except as provided in paragraph (b) of this sub-
7 section, whoever violates subsection (1) of this section shall
8 be fined under this title or imprisoned not more than five
9 years, or both.

10 “(b) If the offense is a first offense under paragraph (a)
11 of this subsection and is not for a tortious or illegal purpose
12 or for purposes of direct or indirect commercial advantage or
13 private commercial gain, and the wire or electronic communi-
14 cation with respect to which the offense under paragraph (a)
15 is a radio communication, then—

16 “(i) if the communication is not the radio portion
17 of a cellular telephone communication, the offender
18 shall be fined under this title or imprisoned not more
19 than one year, or both; and

20 “(ii) if the communication is the radio portion of a
21 cellular telephone communication, the offender shall be
22 fined not more than \$500 or imprisoned not more than
23 six months, or both.

24 “(c) Conduct otherwise an offense under this subsection
25 that consists of or relates to the interception of a satellite

1 transmission that is not encrypted or scrambled and that is
2 transmitted to a broadcasting station for purposes of retrans-
3 mission to the general public is not an offense under this
4 subsection unless the conduct is for the purposes of direct or
5 indirect commercial advantage or private financial gain.”.

6 (e) EXCLUSIVITY OF REMEDIES WITH RESPECT TO
7 ELECTRONIC COMMUNICATIONS.—Section 2518(10) of title
8 18, United States Code, is amended by adding at the end the
9 following:

10 “(c) The remedies and sanctions described in this chap-
11 ter with respect to the interception of electronic communica-
12 tions are the only judicial remedies and sanctions for noncon-
13 stitutional violations of this chapter involving such communi-
14 cations.”.

15 **SEC. 102. REQUIREMENTS FOR CERTAIN DISCLOSURES.**

16 Section 2511 of title 18, United States Code, is
17 amended by adding at the end the following:

18 “(3)(A) Except as provided in subparagraph (B) of this
19 paragraph, a person or entity providing an electronic commu-
20 nication service to the public shall not willfully divulge the
21 contents of any communication (other than one to such
22 person or entity, or an agent thereof) while in transmission
23 on that service to any person or entity other than an ad-
24 dressee or intended recipient of such communication or an
25 agent of such addressee or intended recipient.

1 “(B) A person or entity providing electronic communica-
2 tion service to the public may divulge the contents of any
3 such communication—

4 “(i) as otherwise authorized in section 2511(2)(a)
5 or 2517 of this title;

6 “(ii) with the lawful consent of the originator or
7 any addressee or intended recipient of such communi-
8 cation;

9 “(iii) to a person employed or authorized, or
10 whose facilities are used, to forward such communica-
11 tion to its destination; or

12 “(iv) which were inadvertently obtained by the
13 service provider and which appear to pertain to the
14 commission of a crime, if such divulgence is made to a
15 law enforcement agency.”.

16 **SEC. 103. RECOVERY OF CIVIL DAMAGES.**

17 Section 2520 of title 18, United States Code, is
18 amended to read as follows:

19 **“§ 2520. Recovery of civil damages authorized**

20 “(a) **IN GENERAL.**—Any person whose wire, oral, or
21 electronic communication is intercepted, disclosed, or will-
22 fully used in violation of this chapter may in a civil action
23 recover from the person or entity which engaged in that vio-
24 lation such relief as may be appropriate.

1 “(b) RELIEF.—In an action under this section, appro-
2 priate relief includes—

3 “(1) such preliminary and other equitable or de-
4 claratory relief as may be appropriate;

5 “(2) damages under subsection (c) and punitive
6 damages in appropriate cases; and

7 “(3) a reasonable attorney’s fee and other litiga-
8 tion costs reasonably incurred.

9 “(c) COMPUTATION OF DAMAGES.—The court may
10 assess as damages in an action under this section whichever
11 is the greater of—

12 “(1) the sum of the actual damages suffered by
13 the plaintiff and any profits made by the violator as a
14 result of the violation; or

15 “(2) statutory damages of whichever is the great-
16 er of \$100 a day for each day of violation or \$10,000.

17 “(d) DEFENSE.—A good faith reliance on—

18 “(1) a court warrant or order, a grand jury sub-
19 poena, a legislative authorization, or a statutory
20 authorization;

21 “(2) a request of an investigative or law enforce-
22 ment officer under section 2518(7) of this title; or

23 “(3) a good faith determination that section
24 2511(3) of this title permitted the conduct complained
25 of;

1 is a complete defense against any civil or criminal action
2 brought under this chapter or any other provision of law.

3 “(e) LIMITATION.—A civil action under this section
4 may not be commenced later than two years after the date
5 upon which the claimant first has a reasonable opportunity to
6 discover the violation.”.

7 **SEC. 104. CERTAIN APPROVALS BY JUSTICE DEPARTMENT**
8 **OFFICIALS.**

9 Section 2516(1) of title 18 of the United States Code is
10 amended by striking out “or any Assistant Attorney Gener-
11 al” and inserting in lieu thereof “any Assistant Attorney
12 General, any acting Assistant Attorney General, or any
13 Deputy Assistant Attorney General in the Criminal
14 Division”.

15 **SEC. 105. ADDITION OF OFFENSES TO CRIMES FOR WHICH**
16 **INTERCEPTION IS AUTHORIZED.**

17 (a) **WIRE AND ORAL INTERCEPTIONS.**—Section
18 2516(1) of title 18 of the United States Code is amended—

19 (1) in paragraph (c)—

20 (A) by inserting “section 751 (relating to
21 escape),” after “wagering information),”;

22 (B) by striking out “2314” and inserting
23 “2312, 2313, 2314,” in lieu thereof;

24 (C) by inserting “the second section 2320
25 (relating to trafficking in certain motor vehicles or

1 motor vehicle parts), section 1203 (relating to
2 hostage taking), section 1029 (relating to fraud
3 and related activity in connection with access de-
4 vices), section 3146 (relating to penalty for failure
5 to appear), section 3521(b)(3) (relating to witness
6 relocation and assistance), section 32 (relating to
7 destruction of aircraft or aircraft facilities),” after
8 “stolen property),”;

9 (D) by inserting “section 1952A (relating to
10 use of interstate commerce facilities in the com-
11 mission of murder for hire), section 1952B (relat-
12 ing to violent crimes in aid of racketeering activi-
13 ty),” after “1952 (interstate and foreign travel or
14 transportation in aid of racketeering enter-
15 prises),”; and

16 (E) by inserting “, section 115 (relating to
17 threatening or retaliating against a Federal offi-
18 cial), the section in chapter 65 relating to destruc-
19 tion of an energy facility, and section 1341 (relat-
20 ing to mail fraud),” after “section 1963 (violations
21 with respect to racketeer influenced and corrupt
22 organizations)”;

23 (2) by striking out “or” at the end of paragraph

24 (g);

25 (3) by inserting after paragraph (g) the following:

1 “(h) any felony violation of sections 2511 and
2 2512 (relating to interception and disclosure of certain
3 communications and to certain intercepting devices) of
4 this title;

5 “(i) the location of any fugitive from justice from
6 an offense described in this section; or”; and

7 (4) by redesignating paragraph (h) as paragraph
8 (j).

9 (b) INTERCEPTION OF ELECTRONIC COMMUNICA-
10 TIONS.—Section 2516 of title 18 of the United States Code
11 is amended by adding at the end the following:

12 “(3) Any attorney for the Government (as such term is
13 defined for the purposes of the Federal Rules of Criminal
14 Procedure) may authorize an application to a Federal judge
15 of competent jurisdiction for, and such judge may grant, in
16 conformity with section 2518 of this title, an order authoriz-
17 ing or approving the interception of electronic communica-
18 tions by an investigative or law enforcement officer having
19 responsibility for the investigation of the offense as to which
20 the application is made, when such interception may provide
21 or has provided evidence of any Federal felony.”.

22 SEC. 106. APPLICATIONS, ORDERS, AND IMPLEMENTATION OF
23 ORDERS.

24 (a) PLACE OF AUTHORIZED INTERCEPTION.—Section
25 2518(3) of title 18 of the United States Code is amended by

1 inserting “(and outside that jurisdiction but within the United
2 States in the case of a mobile interception device authorized
3 by a Federal court within such jurisdiction)” after “within
4 the territorial jurisdiction of the court in which the judge is
5 sitting”.

6 (b) REIMBURSEMENT FOR ASSISTANCE.—Section
7 2518(4) of title 18 of the United States Code is amended by
8 striking out “at the prevailing rates” and inserting in lieu
9 thereof “for reasonable expenses incurred in providing such
10 facilities or assistance”.

11 (c) COMMENCEMENT OF 30-DAY PERIOD AND POST-
12 PONEMENT OF MINIMIZATION.—Section 2518(5) of title 18
13 of the United States Code is amended—

14 (1) by inserting after the first sentence the follow-
15 ing: “Such thirty-day period begins on the earlier of
16 the day on which the investigative or law enforcement
17 officer first begins to conduct an interception under the
18 order or ten days after the order is entered.”; and

19 (2) by adding at the end the following: “In the
20 event the intercepted communication is in a code or
21 foreign language, and an expert in that foreign lan-
22 guage or code is not reasonably available during the
23 interception period, minimization may be accomplished
24 as soon as practicable after such interception. An inter-
25 ception under this chapter may be conducted in whole

1 or in part by Government personnel, or by an individ-
2 ual operating under a contract with the Government,
3 acting under the supervision of an investigative or
4 law enforcement officer authorized to conduct the
5 interception.”.

6 (d) ALTERNATIVE TO DESIGNATING SPECIFIC FACILI-
7 TIES FROM WHICH COMMUNICATIONS ARE TO BE INTER-
8 CEPTED.—(1) Section 2518(1)(b)(ii) of title 18 of the United
9 States Code is amended by inserting “except as provided in
10 subsection (11),” before “a particular description”.

11 (2) Section 2518(3)(d) of title 18 of the United States
12 Code is amended by inserting “except as provided in subsec-
13 tion (11),” before “there is”.

14 (3) Section 2518 of title 18 of the United States Code is
15 amended by adding at the end the following:

16 “(11) The requirements of subsections (1)(b)(ii) and (3)(d)
17 of this section relating to the specification of the facilities
18 from which, or the place where, the communication is to be
19 intercepted do not apply if—

20 “(i) in the case of an application with respect to
21 the interception of an oral communication—

22 “(I) the application is by a Federal investiga-
23 tive or law enforcement officer and is approved by
24 the Attorney General, the Deputy Attorney Gen-
25 eral, the Associate Attorney General, an Assist-

1 ant Attorney General, or an acting Assistant At-
2 torney General;

3 “(II) the application contains a full and com-
4 plete statement as to why such specification is not
5 practical and identifies the person committing the
6 offense and whose communications are to be
7 intercepted; and

8 “(III) the judge finds that such specification
9 is not practical; and

10 “(ii) in the case of an application with respect to a
11 wire or electronic communication—

12 “(I) the application is by a Federal investiga-
13 tive or law enforcement officer and is approved by
14 the Attorney General, the Deputy Attorney Gen-
15 eral, the Associate Attorney General, an Assist-
16 ant Attorney General, or an acting Assistant At-
17 torney General;

18 “(II) the application identifies the person be-
19 lieved to be committing the offense and whose
20 communications are to be intercepted and the ap-
21 plicant makes a showing of a purpose, on the part
22 of that person, to thwart interception by changing
23 facilities; and

24 “(III) the judge finds that such purpose has
25 been adequately shown.

1 “(12) An interception of a communication under an
2 order with respect to which the requirements of subsections
3 (1)(b)(ii) and (3)(d) of this section do not apply by reason of
4 subsection (11) shall not begin until the facilities from which,
5 or the place where, the communication is to be intercepted is
6 ascertained by the person implementing the interception
7 order.”.

8 (4) Section 2519(1)(b) of title 18, United States Code, is
9 amended by inserting “(including whether or not the order
10 was an order with respect to which the requirements of sec-
11 tions 2518(1)(b)(ii) and 2518(3)(d) of this title did not apply
12 by reason of section 2518(11) of this title)” after “applied
13 for”.

14 **SEC. 107. INTELLIGENCE ACTIVITIES.**

15 (a) **IN GENERAL.**—Nothing in this Act or the amend-
16 ments made by this Act constitutes authority for the conduct
17 of any intelligence activity.

18 (b) **CERTAIN ACTIVITIES UNDER PROCEDURES AP-**
19 **PROVED BY THE ATTORNEY GENERAL.**—Nothing in chapter
20 119 or chapter 121 of title 18, United States Code, shall
21 affect the conduct, by officers or employees of the United
22 States Government in accordance with other applicable Fed-
23 eral law, under procedures approved by the Attorney Gener-
24 al of activities intended to—

1 (1) intercept encrypted or other official communi-
2 cations of United States executive branch entities or
3 United States Government contractors for communica-
4 tions security purposes;

5 (2) intercept radio communications transmitted be-
6 tween or among foreign powers or agents of a foreign
7 power as defined by the Foreign Intelligence Surveil-
8 lance Act of 1978; or

9 (3) access an electronic communication system
10 used exclusively by a foreign power or agent of a for-
11 eign power as defined by the Foreign Intelligence Sur-
12 veillance Act of 1978.

13 **SEC. 108. MOBILE TRACKING DEVICES.**

14 (a) **IN GENERAL.**—Chapter 205 of title 18, United
15 States Code, is amended by adding at the end the following:

16 **“§ 3117. Mobile tracking devices**

17 “(a) **IN GENERAL.**—If a court is empowered to issue a
18 warrant or other order for the installation of a mobile track-
19 ing device, such order may authorize the use of that device
20 within the jurisdiction of the court, and outside that jurisdic-
21 tion if the device is installed in that jurisdiction.

22 “(b) **DEFINITION.**—As used in this section, the term
23 ‘tracking device’ means an electronic or mechanical device
24 which permits the tracking of the movement of a person or
25 object.”.

1 (b) **CLERICAL AMENDMENT.**—The table of contents at
2 the beginning of chapter 205 of title 18, United States Code,
3 is amended by adding at the end the following:

“3117. Mobile tracking devices.”.

4 **SEC. 109. WARNING SUBJECT OF SURVEILLANCE.**

5 Section 2232 of title 18, United States Code, is
6 amended—

7 (1) by inserting “(a) **PHYSICAL INTERFERENCE**
8 **WITH SEARCH.**—” before “Whoever” the first place
9 it appears;

10 (2) by inserting “(b) **NOTICE OF SEARCH.**—”
11 before “Whoever” the second place it appears; and

12 (3) by adding at the end the following:

13 “(c) **NOTICE OF CERTAIN ELECTRONIC SURVEIL-**
14 **LANCE.**—Whoever, having knowledge that a Federal investi-
15 gative or law enforcement officer has been authorized or has
16 applied for authorization under chapter 119 to intercept a
17 wire, oral, or electronic communication, in order to obstruct,
18 impede, or prevent such interception, gives notice or at-
19 tempts to give notice of the possible interception to any
20 person shall be fined under this title or imprisoned not more
21 than five years, or both.

22 “Whoever, having knowledge that a Federal officer has
23 been authorized or has applied for authorization to conduct
24 electronic surveillance under the Foreign Intelligence Sur-
25 veillance Act (50 U.S.C. 1801, et seq.), in order to obstruct,

1 impede, or prevent such activity, gives notice or attempts to
2 give notice of the possible activity to any person shall be
3 fined under this title or imprisoned not more than five years,
4 or both.”.

5 **SEC. 110. INJUNCTIVE REMEDY.**

6 (a) **IN GENERAL.**—Chapter 119 of title 18, United
7 States Code, is amended by adding at the end the following:

8 **“§ 2521. Injunction against illegal interception**

9 “Whenever it shall appear that any person is engaged
10 or is about to engage in any act which constitutes or will
11 constitute a felony violation of this chapter, the Attorney
12 General may initiate a civil action in a district court of the
13 United States to enjoin such violation. The court shall pro-
14 ceed as soon as practicable to the hearing and determination
15 of such an action, and may, at any time before final determi-
16 nation, enter such a restraining order or prohibition, or take
17 such other action, as is warranted to prevent a continuing
18 and substantial injury to the United States or to any person
19 or class of persons for whose protection the action is brought.
20 A proceeding under this section is governed by the Federal
21 Rules of Civil Procedure, except that, if an indictment has
22 been returned against the respondent, discovery is governed
23 by the Federal Rules of Criminal Procedure.”.

1 (b) CLERICAL AMENDMENT.—The table of sections at
2 the beginning of chapter 119 of title 18, United States Code,
3 is amended by adding at the end thereof the following:

“2521. Injunction against illegal interception.”.

4 **SEC. 111. EFFECTIVE DATE.**

5 (a) IN GENERAL.—Except as provided in subsection (b),
6 this title and the amendments made by this title shall take
7 effect 90 days after the date of the enactment of this Act and
8 shall, in the case of conduct pursuant to a court order or
9 extension, apply only with respect to court orders or exten-
10 sions made after this title takes effect.

11 (b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF
12 INTERCEPTIONS.—Any interception pursuant to section
13 2516(2) of title 18 of the United States Code which would be
14 valid and lawful without regard to the amendments made by
15 this title shall be valid and lawful notwithstanding such
16 amendments if such interception occurs during the period be-
17 ginning on the date such amendments take effect and ending
18 on the earlier of—

19 (1) the day before the date of the taking effect of
20 State law conforming the applicable State statute with
21 chapter 119 of title 18, United States Code, as so
22 amended; or

23 (2) the date two years after the date of the enact-
24 ment of this Act.

1 **TITLE II—STORED WIRE AND ELECTRONIC**
2 **COMMUNICATIONS AND TRANSACTION-**
3 **AL RECORDS ACCESS**

4 **SEC. 201. TITLE 18 AMENDMENT.**

5 Title 18, United States Code, is amended by inserting
6 after chapter 119 the following:

7 **“CHAPTER 121—STORED WIRE AND ELECTRONIC**
8 **COMMUNICATIONS AND TRANSACTIONAL**
9 **RECORDS ACCESS**

“Sec.

“2701. Unlawful access to stored communications.

“2702. Disclosure of contents.

“2703. Requirements for governmental access.

“2704. Backup preservation.

“2705. Delayed notice.

“2706. Cost reimbursement.

“2707. Civil action.

“2708. Exclusivity of remedies.

“2709. Counterintelligence access to telephone toll and transactional records.

“2710. Definitions.

10 **“§ 2701. Unlawful access to stored communications**

11 “(a) **OFFENSE.**—Except as provided in subsection (c) of
12 this section whoever—

13 “(1) intentionally accesses without authorization a
14 facility through which an electronic communication
15 service is provided; or

16 “(2) intentionally exceeds an authorization to
17 access that facility;

18 and thereby obtains, alters, or prevents authorized access to
19 a wire or electronic communication while it is in electronic

1 storage in such system shall be punished as provided in sub-
2 section (b) of this section.

3 “(b) PUNISHMENT.—The punishment for an offense
4 under subsection (a) of this section is—

5 “(1) if the offense is committed for purposes of
6 commercial advantage, malicious destruction or
7 damage, or private commercial gain—

8 “(A) a fine of not more than \$250,000 or
9 imprisonment for not more than one year, or both,
10 in the case of a first offense under this subpara-
11 graph; and

12 “(B) a fine under this title or imprisonment
13 for not more than two years, or both, for any sub-
14 sequent offense under this subparagraph; and

15 “(2) a fine of not more than \$5,000 or imprison-
16 ment for not more than six months, or both, in any
17 other case.

18 “(c) EXCEPTIONS.—Subsection (a) of this section does
19 not apply with respect to conduct authorized—

20 “(1) by the person or entity providing a wire or
21 electronic communications service;

22 “(2) by a user of that service with respect to a
23 communication of or intended for that user; or

24 “(3) in section 2703 or 2704 of this title.

1 **“§ 2702. Disclosure of contents**

2 “(a) PROHIBITIONS.—Except as provided in subsection

3 (b)—

4 “(1) a person or entity providing an electronic
5 communication service to the public shall not knowing-
6 ly divulge to any person or entity the contents of a
7 communication while in electronic storage by that serv-
8 ice; and

9 “(2) a person or entity providing remote comput-
10 ing service to the public shall not knowingly divulge to
11 any person or entity the contents of any communica-
12 tion which is carried or maintained on that service—

13 “(A) on behalf of, and received by means of
14 electronic transmission from (or created by means
15 of computer processing of communications re-
16 ceived by means of electronic transmission from),
17 a subscriber or customer of such service; and

18 “(B) solely for the purpose of providing stor-
19 age or computer processing services to such sub-
20 scriber or customer, if the provider is not author-
21 ized to access the contents of any such communi-
22 cations for purposes of providing any services
23 other than storage or computer processing.

24 “(b) EXCEPTIONS.—A person or entity may divulge the
25 contents of a communication—

1 “(1) to an addressee or intended recipient of such
2 communication or an agent of such addressee or in-
3 tended recipient;

4 “(2) as otherwise authorized in section 2516,
5 2511(2)(a), or 2703 of this title;

6 “(3) with the lawful consent of the originator or
7 an addressee or intended recipient of such communica-
8 tion, or the subscriber in the case of remote computing
9 service;

10 “(4) to a person employed or authorized or whose
11 facilities are used to forward such communication to its
12 destination;

13 “(5) as may be necessarily incident to the rendi-
14 tion of the service or to the protection of the rights or
15 property of the provider of that service; or

16 “(6) to a law enforcement agency, if such con-
17 tents—

18 “(A) were inadvertently obtained by the
19 service provider; and

20 “(B) appear to pertain to the commission of
21 a crime.

22 **“§ 2703. Requirements for governmental access**

23 “(a) CONTENTS OF ELECTRONIC COMMUNICATIONS IN
24 ELECTRONIC STORAGE.—A governmental entity may re-
25 quire the disclosure by a provider of electronic communica-

1 tion service of the contents of a non-voice wire communica-
2 tion or an electronic communication, that is in electronic stor-
3 age in an electronic communications system for 180 days or
4 less, only pursuant to a warrant issued under the Federal
5 Rules of Criminal Procedure or equivalent State warrant. A
6 governmental entity may require the disclosure by a provider
7 of electronic communications services of the contents of an
8 electronic communication that has been in electronic storage
9 in an electronic communications system for more than 180
10 days by the means available under subsection (b) of this
11 section.

12 “(b) CONTENTS OF ELECTRONIC COMMUNICATIONS IN
13 A REMOTE COMPUTING SERVICE.—(1) A governmental
14 entity may require a provider of remote computing service to
15 disclose the contents of any electronic communication to
16 which this paragraph is made applicable by paragraph (2) of
17 this subsection—

18 “(A) without required notice to the subscriber or
19 customer, if the governmental entity obtains a warrant
20 issued under the Federal Rules of Criminal Procedure
21 or equivalent State warrant; or

22 “(B) with prior notice from the governmental
23 entity to the subscriber or customer if the governmen-
24 tal entity—

1 “(i) uses an administrative subpoena author-
2 ized by a Federal or State statute or a Federal or
3 State grand jury subpoena; or

4 “(ii) obtains a court order for such disclosure
5 under subsection (d) of this section;

6 except that delayed notice may be given pursuant to
7 section 2705 of this title.

8 “(2) Paragraph (1) is applicable with respect to any
9 electronic communication that is held or maintained on that
10 service—

11 “(A) on behalf of, and received by means of elec-
12 tronic transmission from (or created by means of com-
13 puter processing of communications received by means
14 of electronic transmission from), a subscriber or cus-
15 tomer of such remote computing service; and

16 “(B) solely for the purpose of providing storage or
17 computer processing services to such subscriber or cus-
18 tomer, if the provider is not authorized to access the
19 contents of any such communications for purposes of
20 providing any services other than storage or computer
21 processing.

22 “(c) RECORDS CONCERNING ELECTRONIC COMMUNI-
23 CATIONS SERVICE OR REMOTE COMPUTING SERVICE.—A
24 governmental entity may require a provider of electronic
25 communications service or remote computing service to dis-

1 close a record or other information pertaining to a subscriber
2 to or customer of such service (not including the contents of
3 communications covered by subsection (a) or (b) of this sec-
4 tion) without required notice to the subscriber or customer if
5 the governmental entity—

6 “(1) uses an administrative subpoena authorized
7 by a Federal or State statute, or a Federal or State
8 grand jury subpoena;

9 “(2) obtains a warrant issued under the Federal
10 Rules of Criminal Procedure or equivalent State war-
11 rant; or

12 “(3) obtains a court order for such disclosure
13 under subsection (d) of this section.

14 “(d) REQUIREMENTS FOR COURT ORDER.—A court
15 order for disclosure under subsection (b) or (c) of this section
16 shall issue only if the governmental entity shows that there is
17 reason to believe the contents of a wire or electronic commu-
18 nication, or the records or other information sought, are rele-
19 vant to a legitimate law enforcement inquiry. In the case of a
20 State governmental authority, such a court order shall not
21 issue if prohibited by the law of such State.

22 **“§ 2704. Backup preservation**

23 “(a) BACKUP PRESERVATION.—(1) A governmental
24 entity acting under section 2703(b)(2) may include in its sub-
25 poena or court order a requirement that the service provider

1 to whom the request is directed create a backup copy of the
2 contents of the electronic communications sought in order to
3 preserve those communications. Without notifying the sub-
4 scriber or customer of such subpoena or court order, such
5 service provider shall create such backup copy as soon as
6 practicable consistent with its regular business practices and
7 shall confirm to the governmental entity that such backup
8 copy has been made. Such backup copy shall be created
9 within two business days after receipt by the service provider
10 of the subpoena or court order.

11 “(2) Notice to the subscriber or customer shall be made
12 by the governmental entity within three days after receipt of
13 such confirmation, unless such notice is delayed pursuant to
14 section 2705(a).

15 “(3) The service provider shall not destroy such backup
16 copy until the later of—

17 “(A) the delivery of the information; or

18 “(B) the resolution of any proceedings (including
19 appeals of any proceeding) concerning the govern-
20 ment’s subpoena or court order.

21 “(4) The service provider shall release such backup copy
22 to the requesting governmental entity no sooner than 14 days
23 after the governmental entity’s notice to the subscriber or
24 customer if such service provider—

1 “(A) has not received notice from the subscriber
2 or customer that the subscriber or customer has chal-
3 lenged the governmental entity’s request; and

4 “(B) has not initiated proceedings to challenge the
5 request of the governmental entity.

6 “(5) A governmental entity may seek to require the cre-
7 ation of a backup copy under subsection (a)(1) of this section
8 if in its sole discretion such entity determines that there is
9 reason to believe that notification under section 2703 of this
10 title of the existence of the subpoena or court order may
11 result in destruction of or tampering with evidence. This de-
12 termination is not subject to challenge by the subscriber or
13 customer or service provider.

14 “(b) CUSTOMER CHALLENGES.—(1) Within 14 days
15 after notice by the governmental entity to the subscriber or
16 customer under subsection (a)(2) of this section, such sub-
17 scriber or customer may file a motion to quash such subpoena
18 or vacate such court order, with copies served upon the gov-
19 ernmental entity and with written notice of such challenge to
20 the service provider. A motion to vacate a court order shall
21 be filed in the court which issued such order. A motion to
22 quash a subpoena shall be filed in the appropriate United
23 States district court or State court. Such motion or applica-
24 tion shall contain an affidavit or sworn statement—.

1 “(A) stating that the applicant is a customer or
2 subscriber to the service from which the contents of
3 electronic communications maintained for him have
4 been sought; and

5 “(B) stating the applicant’s reasons for believing
6 that the records sought are not relevant to a legitimate
7 law enforcement inquiry or that there has not been
8 substantial compliance with the provisions of this chap-
9 ter in some other respect.

10 “(2) Service shall be made under this section upon a
11 governmental entity by delivering or mailing by registered or
12 certified mail a copy of the papers to the person, office, or
13 department specified in the notice which the customer has
14 received pursuant to this chapter. For the purposes of this
15 section, the term ‘delivery’ has the meaning given that term
16 in the Federal Rules of Civil Procedure.

17 “(3) If the court finds that the customer has complied
18 with paragraphs (1) and (2) of this subsection, the court shall
19 order the governmental entity to file a sworn response, which
20 may be filed in camera if the governmental entity includes in
21 its response the reasons which make in camera review appro-
22 priate. If the court is unable to determine the motion or ap-
23 plication on the basis of the parties’ initial allegations and
24 response, the court may conduct such additional proceedings
25 as it deems appropriate. All such proceedings shall be com-

1 pleted and the motion or application decided as soon as prac-
2 ticable after the filing of the governmental entity's response.

3 “(4) If the court finds that the applicant is not the sub-
4 scriber or customer for whom the communications sought by
5 the governmental entity are maintained, or that there is a
6 reason to believe that the law enforcement inquiry is legiti-
7 mate and that the communications sought are relevant to
8 that inquiry, it shall deny the motion or application and order
9 such process enforced. If the court finds that the applicant is
10 the subscriber or customer for whom the communications
11 sought by the governmental entity are maintained, and that
12 there is not a reason to believe that the communications
13 sought are relevant to a legitimate law enforcement inquiry,
14 or that there has not been substantial compliance with the
15 provisions of this chapter, it shall order the process quashed.

16 “(5) A court order denying a motion or application
17 under this section shall not be deemed a final order and no
18 interlocutory appeal may be taken therefrom by the
19 customer.

20 **“§ 2705. Delayed notice**

21 “(a) DELAY OF NOTIFICATION.—(1) A governmental
22 entity acting under section 2703(b) of this title may—

23 “(A) where a court order is sought, include in the
24 application a request, which the court shall grant, for
25 an order delaying the notification required under sec-

1 tion 2703(b) of this title for a period not to exceed 90
2 days; if the court determines that there is reason to be-
3 lieve that notification of the existence of the court
4 order may have an adverse result described in para-
5 graph (2) of this subsection; or

6 “(B) where an administrative subpoena authorized
7 by a Federal or State statute or a Federal or State
8 grand jury subpoena is obtained, delay the notification
9 required under section 2703(b) of this title for a period
10 not to exceed 90 days upon the execution of a written
11 certification of a supervisory official that there is
12 reason to believe that notification of the existence of
13 the subpoena may have an adverse result described in
14 paragraph (2) of this subsection.

15 “(2) An adverse result for the purposes of paragraph (1)
16 of this subsection is—

17 “(A) endangering the life or physical safety of an
18 individual;

19 “(B) flight from prosecution;

20 “(C) destruction of or tampering with evidence;

21 “(D) intimidation of potential witnesses; or

22 “(E) otherwise seriously jeopardizing an investiga-
23 tion or unduly delaying a trial.

24 “(3) The governmental entity shall maintain a true copy
25 of certification under paragraph (1)(B).

1 “(4) Extensions of the delay of notification provided in
2 section 2703 of up to 90 days each may be granted by the
3 court upon application, or by certification by a governmental
4 entity, but only in accordance with subsection (b) or (c) of this
5 section.

6 “(5) Upon expiration of the period of delay of notifica-
7 tion under paragraph (1) or (4) of this subsection, the govern-
8 mental entity shall serve upon, or deliver by registered or
9 first class mail to, the customer or subscriber a copy of the
10 process or request together with notice that—

11 “(A) states with reasonable specificity the nature
12 of the law enforcement inquiry; and

13 “(B) informs such customer or subscriber—

14 “(i) that information maintained for such cus-
15 tomer or subscriber by the service provider named
16 in such process or request was supplied to or re-
17 quested by that governmental authority and the
18 date on which the supplying or request took
19 place;

20 “(ii) that notification of such customer or
21 subscriber was delayed;

22 “(iii) what governmental entity or court
23 made the certification or determination pursuant
24 to which that delay was made; and

1 “(iv) which provision of this chapter allowed
2 such delay.

3 “(6) As used in this subsection, the term ‘supervi-
4 sory official’ means the investigative agent in charge or
5 assistant investigative agent in charge or an equivalent
6 of an investigating agency’s headquarters or regional
7 office, or the chief prosecuting attorney or the first as-
8 sistant prosecuting attorney or an equivalent of a pros-
9 ecuting attorney’s headquarters or regional office.

10 “(b) PRECLUSION OF NOTICE TO SUBJECT OF GOV-
11 ERNMENTAL ACCESS.—A governmental entity acting under
12 section 2703, when it is not required to notify the subscriber
13 or customer under section 2703(b)(1), or to the extent that it
14 may delay such notice pursuant to subsection (a) of this sec-
15 tion, may apply to a court for an order commanding a provid-
16 er of electronic communications service or remote computing
17 service to whom a warrant, subpoena, or court order is di-
18 rected, for such period as the court deems appropriate, not to
19 notify any other person of the existence of the warrant, sub-
20 poena, or court order. The court shall enter such an order if
21 it determines that there is reason to believe that notification
22 of the existence of the warrant, subpoena, or court order will
23 result in—

24 “(1) endangering the life or physical safety of an
25 individual;

- 1 “(2) flight from prosecution;
2 “(3) destruction of or tampering with evidence;
3 “(4) intimidation of potential witnesses; or
4 “(5) otherwise seriously jeopardizing an investiga-
5 tion or unduly delaying a trial.

6 **“§ 2706. Cost reimbursement**

7 “(a) PAYMENT.—Except as otherwise provided in sub-
8 section (c), a governmental entity obtaining the contents of
9 communications, records, or other information under section
10 2702, 2703, or 2704 of this title shall pay to the person or
11 entity assembling or providing such information a fee for re-
12 imbursement for such costs as are reasonably necessary and
13 which have been directly incurred in searching for, assem-
14 bling, reproducing, or otherwise providing such information.
15 Such reimbursable costs shall include any costs due to neces-
16 sary disruption of normal operations of any electronic com-
17 munication service or remote computing service in which
18 such information may be stored.

19 “(b) AMOUNT.—The amount of the fee provided by sub-
20 section (a) shall be as mutually agreed by the governmental
21 entity and the person or entity providing the information, or,
22 in the absence of agreement, shall be as determined by the
23 court which issued the order for production of such informa-
24 tion (or the court before which a criminal prosecution relating

1 to such information would be brought, if no court order was
2 issued for production of the information).

3 “(c) The requirement of subsection (a) of this section
4 does not apply with respect to records or other information
5 maintained by a communications common carrier that relate
6 to telephone toll records and telephone listings obtained
7 under section 2703 of this title. The court may, however,
8 order a payment as described in subsection (a) if the court
9 determines the information required is unusually voluminous
10 in nature or otherwise caused an undue burden on the
11 provider.

12 **“§ 2707. Civil action**

13 “(a) CAUSE OF ACTION.—Any provider of electronic
14 communication service, subscriber, or customer aggrieved by
15 any violation of this chapter in which the conduct constitut-
16 ing the violation is engaged in with a knowing or intentional
17 state of mind may, in a civil action, recover from the person
18 or entity which engaged in that violation such relief as may
19 be appropriate.

20 “(b) RELIEF.—In a civil action under this section, ap-
21 propriate relief includes—

22 “(1) such preliminary and other equitable or de-
23 claratory relief as may be appropriate;

24 “(2) damages under subsection (c); and

1 “(3) a reasonable attorney’s fee and other litigation costs reasonably incurred.

2 “(c) DAMAGES.—The court may assess as damages in a
3 civil action under this section the sum of the actual damages
4 suffered by the plaintiff and any profits made by the violator
5 as a result of the violation, but in no case shall a person
6 entitled to recover receive less than the sum of \$1,000.

7 “(d) DEFENSE.—A good faith reliance on—

8 “(1) a court warrant or order, a grand jury subpoena, a legislative authorization, or a statutory
9 authorization;

10 “(2) a request of an investigative or law enforcement officer under section 2518(7) of this title; or

11 “(3) a good faith determination that section
12 2511(3) of this title permitted the conduct complained
13 of;

14 is a complete defense to any civil or criminal action brought
15 under this chapter or any other law.

16 “(e) LIMITATION.—A civil action under this section
17 may not be commenced later than two years after the date
18 upon which the claimant first discovered or had a reasonable
19 opportunity to discover the violation.

20
21
22

1 **“§ 2708. Exclusivity of remedies**

2 “The remedies and sanctions described in this chapter
3 are the only judicial remedies and sanctions for nonconstitu-
4 tional violations of this chapter.

5 **“§ 2709. Counterintelligence access to telephone toll and**
6 **transactional records**

7 “(a) DUTY TO PROVIDE.—A Communications common
8 carrier or an electronic communication service provider shall
9 comply with a request made for telephone subscriber informa-
10 tion and toll billing records information, or electronic commu-
11 nication transactional records made by the Director of the
12 Federal Bureau of Investigation under subsection (b) of this
13 section.

14 “(b) REQUIRED CERTIFICATION.—The Director of the
15 Federal Bureau of Investigation (or an individual within the
16 Federal Bureau of Investigation designated for this purpose
17 by the Director) may request any such information and
18 records if the Director (or the Director’s designee) certifies in
19 writing to the carrier or provider to which the request is
20 made that—

21 “(1) the information sought is relevant to an au-
22 thorized foreign counterintelligence investigation; and

23 “(2) there are specific and articulable facts giving
24 reason to believe that the person or entity to whom the
25 information sought pertains is a foreign power or an
26 agent of a foreign power as defined in section 101 of

1 the Foreign Intelligence Surveillance Act of 1978 (50
2 U.S.C. 1801).

3 “(c) PROHIBITION OF CERTAIN DISCLOSURE.—No
4 communications common carrier or service provider, or offi-
5 cer, employee, or agent thereof, shall disclose to any person
6 that the Federal Bureau of Investigation has sought or ob-
7 tained access to information or records under this section.

8 “(d) DISSEMINATION BY BUREAU.—The Federal
9 Bureau of Investigation may disseminate information and
10 records obtained under this section only as provided in guide-
11 lines approved by the Attorney General for foreign intelli-
12 gence collection and foreign counterintelligence investiga-
13 tions conducted by the Federal Bureau of Investigation, and,
14 with respect to dissemination to an agency of the United
15 States, only if such information is clearly relevant to the au-
16 thorized responsibilities of such agency.

17 “(e) REQUIREMENT THAT CERTAIN CONGRESSIONAL
18 BODIES BE INFORMED.—On a semiannual basis the Director
19 of the Federal Bureau of Investigation shall fully inform the
20 Permanent Select Committee on Intelligence of the House of
21 Representatives and the Select Committee on Intelligence of
22 the Senate concerning all requests made under subsection (b)
23 of this section.

24 “§ 2710. Definitions for chapter

25 “As used in this chapter—

“3124. Assistance in installation and use of a pen register.

“3125. Reports concerning pen registers.

“3126. Definitions for chapter.

1 **“§ 3121. General prohibition on pen register use; exception**

2 “(a) IN GENERAL.—Except as provided in this section,
3 no person may install or use a pen register without first ob-
4 taining a court order under section 3123 of this title or under
5 the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C.
6 1801 et seq.).

7 “(b) EXCEPTION.—The prohibition of subsection (a)
8 does not apply with respect to the use of a pen register by a
9 provider of electronic or wire communication service—

10 “(1) relating to the operation, maintenance, and
11 testing of a wire or electronic communication service
12 or to the protection of the rights or property of such
13 provider, or to the protection of users of that service
14 from abuse of service or unlawful use of service; or

15 “(2) to record the fact that a wire or electronic
16 communication was initiated or completed in order to
17 protect such provider, another provider furnishing serv-
18 ice toward the completion of the wire communication,
19 or a user of that service, from fraudulent, unlawful or
20 abusive use of service, or with the consent or the user
21 of that service.

22 “(c) PENALTY.—Whoever knowingly violates subsec-
23 tion (a) shall be fined under this title or imprisoned not more
24 than one year, or both.

1 **“§ 3122. Application for an order for a pen register**

2 “(a) APPLICATION.—(1) An attorney for the Govern-
3 ment may make application for an order or an extension of an
4 order under section 3123 of this title authorizing or approv-
5 ing the installation and use of a pen register under this chap-
6 ter, in writing under oath or equivalent affirmation, to a court
7 of competent jurisdiction.

8 “(2) Unless prohibited by State law, a State investiga-
9 tive or law enforcement officer may make application for an
10 order or an extension of an order under section 3123 of this
11 title authorizing or approving the installation and use of a
12 pen register under this chapter, in writing under oath or
13 equivalent affirmation, to a court of competent jurisdiction of
14 such State.

15 “(b) CONTENTS OF APPLICATION.—An application
16 under subsection (a) of this section shall include—

17 “(1) the identity of the attorney for the Govern-
18 ment or the State law enforcement or investigative of-
19 ficer making the application and the identity of the law
20 enforcement agency conducting the investigation; and

21 “(2) a certification by the applicant that the infor-
22 mation likely to be obtained is relevant to an ongoing
23 criminal investigation being conducted by that agency.

24 **“§ 3123. Issuance of an order for a pen register**

25 “(a) IN GENERAL.—Upon an application made under
26 section 3122 of this title, the court shall enter an ex parte

1 order authorizing the installation and use of a pen register
2 within the jurisdiction of the court if the court finds that the
3 attorney for the government or the State law enforcement or
4 investigative officer has certified to the court that the infor-
5 mation likely to be obtained by such installation and use is
6 relevant to an ongoing criminal investigation.

7 “(b) CONTENTS OF ORDER.—An order issued under
8 this section—

9 “(1) shall specify—

10 “(A) the identity, if known, of the person to
11 whom is leased or in whose name is listed the
12 telephone line to which the pen register is to be
13 attached;

14 “(B) the identity, if known, of the person
15 who is the subject of the criminal investigation;

16 “(C) the number and, if known, physical lo-
17 cation of the telephone line to which the pen reg-
18 ister is to be attached; and

19 “(D) a statement of the offense to which the
20 information likely to be obtained by the pen regis-
21 ter relates; and

22 “(2) shall direct, upon the request of the appli-
23 cant, the furnishing of information, facilities, and tech-
24 nical assistance necessary to accomplish the installation
25 of the pen register under section 3124 of this title.

1 “(c) TIME PERIOD AND EXTENSIONS.—(1) An order
2 issued under this section shall authorize the installation and
3 use of a pen register for a period not to exceed 60 days.

4 “(2) Extensions of such an order may be granted, but
5 only upon an application for an order under section 3122 of
6 this title and upon the judicial finding required by subsection
7 (a) of this section. The period of extension shall be for a
8 period not to exceed 60 days.

9 “(d) NONDISCLOSURE OF EXISTENCE OF PEN REGIS-
10 TER.—An order authorizing or approving the installation and
11 use of a pen register shall direct that—

12 “(1) the order be sealed until otherwise ordered
13 by the court; and

14 “(2) the person owning or leasing the line to
15 which the pen register is attached, or who has been or-
16 dered by the court to provide assistance to the appli-
17 cant, not disclose the existence of the pen register or
18 the existence of the investigation to the listed subscrib-
19 er, or to any other person, unless or until otherwise or-
20 dered by the court.

21 **“§ 3124. Assistance in installation and use of a pen regis-**
22 **ter**

23 “(a) IN GENERAL.—Upon the request of an attorney for
24 the government or an officer of a law enforcement agency
25 authorized to install and use a pen register under this chap-

1 ter, a provider of wire communication service, landlord, cus-
2 todian, or other person shall furnish such investigative or law
3 enforcement officer forthwith all information, facilities, and
4 technical assistance necessary to accomplish the installation
5 of the pen register unobtrusively and with a minimum of in-
6 terference with the services that the person so ordered by the
7 court accords the party with respect to whom the installation
8 and use is to take place, if such assistance is directed by a
9 court order as provided in section 3123(b)(2) of this title.

10 “(b) COMPENSATION.—A provider of wire communica-
11 tion service, landlord, custodian, or other person who fur-
12 nishes facilities or technical assistance pursuant to this sec-
13 tion shall be reasonably compensated for such reasonable ex-
14 penses incurred in providing such facilities and assistance.

15 **“§ 3125. Reports concerning pen registers**

16 “The Attorney General shall annually report to Con-
17 gress on the number of pen register orders applied for by law
18 enforcement agencies of the Department of Justice.

19 **“§ 3126. Definitions for chapter**

20 “As used in this chapter—

21 “(1) the term ‘communications common carrier’
22 has the meaning set forth for the term ‘common carri-
23 er’ in section 3(h) of the Communications Act of 1934
24 (47 U.S.C. 153(h));

1 “(2) the term ‘wire communication’ has the mean-
2 ing set forth for such term in section 2510 of this title;

3 “(3) the term ‘court of competent jurisdiction’
4 means—

5 “(A) a district court of the United States (in-
6 cluding a magistrate of such a court) or a United
7 States Court of Appeals; or

8 “(B) a court of general criminal jurisdiction
9 of a State authorized by the law of that State to
10 enter orders authorizing the use of a pen register;

11 “(4) the term ‘pen register’ means a device which
12 records or decodes electronic or other impulses which
13 identify the numbers dialed or otherwise transmitted,
14 with respect to wire communications, on the telephone
15 line to which such device is attached, but such term
16 does not include any device used by a provider of wire
17 communication service for billing, or recording as an
18 incident to billing, for communications services pro-
19 vided by such provider; and

20 “(5) the term ‘attorney for the Government’ has
21 the meaning given such term for the purposes of the
22 Federal Rules of Criminal Procedure; and

23 “(6) the term ‘State’ means a State, the District
24 of Columbia, Puerto Rico, and any other possession or
25 territory of the United States.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters for
 2 part II of title 18 of the United States Code is amended by
 3 inserting after the item relating to chapter 205 the following
 4 new item:

“206. Pen Registers..... 3121”.

5 SEC. 302. EFFECTIVE DATE.

6 (a) IN GENERAL.—Except as provided in subsection (b),
 7 this title and the amendments made by this title shall take
 8 effect 90 days after the date of the enactment of this Act and
 9 shall, in the case of conduct pursuant to a court order or
 10 extension, apply only with respect to court orders or exten-
 11 sions made after this title takes effect.

12 (b) SPECIAL RULE FOR STATE AUTHORIZATIONS OF
 13 INTERCEPTIONS.—Any pen register order or installation
 14 which would be valid and lawful without regard to the
 15 amendments made by this title shall be valid and lawful not-
 16 withstanding such amendments if such order or installation
 17 occurs during the period beginning on the date such amend-
 18 ments take effect and ending on the earlier of—

19 (1) the day before the date of the taking effect of
 20 changes in State law required in order to make orders
 21 or installations under Federal law as amended by this
 22 title; or

Approved For Release 2011/03/15 : CIA-RDP87B00858R000400480027-1

Calendar No. 700

99TH CONGRESS
2D SESSION

H. R. 4952

A ACT

To amend title 48, United States Code, with respect to the interception of certain communications, other forms of surveillance, and for other purposes.

JUNE 24 (legislative day, JUNE 23), 1986

Received; read twice and placed on the calendar

Approved For Release 2011/03/15 : CIA-RDP87B00858R000400480027-1